

TITLE 59

TRUSTS, USES AND POWERS

CHAPTER 59-01

GENERAL PROVISIONS

59-01-01. Trusts - Classification. A trust is either:

1. Express; or
2. Implied.

59-01-02. Express trust - Definition. An express trust is an obligation arising out of personal confidence reposed in and voluntarily accepted by one for the benefit of another.

59-01-03. Purpose for which express trust may be created. A trust may be created for any purpose for which a contract lawfully may be made, except as otherwise prescribed by chapters 47-10, 59-02, and 59-03.

59-01-04. Express trust - How created.

1. Subject to the provisions of section 59-03-01, concerning express trusts in relation to real property, an express trust is created as to the trustor and beneficiary by any words or acts of the trustor indicating with reasonable certainty:
 - a. An intention on the part of the trustor to create a trust; and
 - b. The subject, purpose, and beneficiary of the trust.
2. It is created as to the trustee by any words or acts of the trustee indicating with reasonable certainty:
 - a. The trustee's acceptance of the trust or acknowledgment made upon sufficient consideration of its existence; and
 - b. The subject, purpose, and beneficiary of the trust.

59-01-05. Implied trust - Definition. An implied trust is one that is created by operation of law.

59-01-06. Implied trust - How created. An implied trust arises in the following cases:

1. One who wrongfully detains a thing is an implied trustee thereof for the benefit of the owner.
2. One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless the person has some other and better right thereto, an implied trustee of the thing gained for the benefit of the person who would otherwise have had it.
3. Each one to whom property is transferred in violation of a trust holds the same as an implied trustee under such trust, unless the person purchased it in good faith and for a valuable consideration.
4. When a transfer of real property is made to one person and the consideration therefor is paid by or for another, a trust is presumed to result in favor of the person by or for whom such payment is made.

59-01-07. Trustor, trustee, beneficiary - Definition. The person whose confidence creates a trust is called the trustor, the person in whom the confidence is reposed is called the trustee, and the person for whose benefit the trust is created is called the beneficiary.

59-01-08. One assuming relation of personal confidence is trustee. Everyone who voluntarily assumes a relation of personal confidence with another is deemed a trustee within the meaning of this chapter not only as to the person who reposes such confidence, but as to all persons of whose affairs the person thus acquires information which was given to the person in the like confidence, or over whose affairs the person, by such confidence, obtains any control.

59-01-09. Good faith required of trustee. In all matters connected with a trustee's trust, a trustee is bound to act in the highest good faith toward the beneficiary and may not obtain any advantage therein over the latter by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

59-01-10. Trustee shall not profit by use of property. A trustee shall not use or deal with the trust property for the trustee's own profit or for any other purpose not connected with the trust. If the trustee does so, the trustee, at the option of the beneficiary, may be required to account for all profits made thereby, or to pay the value of the use of the trust property, and, if the trustee has disposed thereof, to replace it with its fruits or to account for its proceeds with interest.

59-01-11. Transactions adverse to beneficiary prohibited - Exceptions. Neither a trustee nor any of the trustee's agents may take part in any transaction concerning the trust in which the trustee or anyone for whom the trustee acts as agent has an interest, present or contingent, adverse to that of the trust's beneficiary, except as follows:

1. When the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee and of all other facts concerning the transaction which might affect the beneficiary's own decision and without the use of any influence on the part of the trustee, permits the trustee to do so;
2. When the beneficiary, not having power to contract, the district court upon the like information of the facts, grants the like permission; or
3. When some of the beneficiaries having capacity to contract and some not having it, the former grant permission for themselves and the district court for the latter in the manner above prescribed.

59-01-12. Use of influence for own advantage prohibited. A trustee may not use the influence which the trustee's position gives the trustee to obtain any advantage from the trust's beneficiary.

59-01-13. Adverse trust prohibited. No trustee, so long as the trustee remains in the trust, may undertake another trust adverse in its nature to the interest of the trust's beneficiary in the subject of the trust without the consent of the latter.

59-01-14. Adverse interest. If a trustee acquires any interest or becomes charged with any duty adverse to the interest of the trust's beneficiary in the subject of the trust, the trustee immediately must inform the latter thereof and may be removed at once.

59-01-15. Violation is a fraud against beneficiary. Every violation of the provisions of sections 59-01-09, 59-01-10, 59-01-11, 59-01-12, 59-01-13, and 59-01-14 is a fraud against the beneficiary of the trust.

59-01-16. Presumption against trustee. All transactions between a trustee and the trust's beneficiary during the existence of the trust or while the influence acquired by the trustee remains, by which the trustee obtains any advantage from the trust's beneficiary, are presumed to be entered into by the latter without sufficient consideration and under undue influence.

59-01-17. Liability for mingling property. A trustee who willfully and unnecessarily mingles the trust property with the trustee's own so as to constitute the trustee in appearance its absolute owner is liable for its safety in all events.

59-01-18. Liability of trustee for unauthorized use of trust property. A trustee who uses or disposes of the trust property in any manner not authorized by the trust, but in good faith and with intent to serve the interest of the beneficiary, is liable only to make good whatever is lost to the beneficiary by the trustee's error.

59-01-19. Liability for acts of cotrustees. A trustee is responsible for the wrongful acts of a cotrustee to which the trustee consented or which by the trustee's negligence the trustee enabled the latter to commit, but for no others.

59-01-20. Liability of third persons dealing with trustee. One who actually and in good faith transfers any money or other property to a trustee as such is not bound to see to the application thereof, and the person's rights in no way can be prejudiced by a misapplication thereof by the trustee. Other persons at their peril must see to the proper application of money or other property paid or delivered by them.